

# **5-10.000 THE WILDLIFE AND MARINE RESOURCES SECTION**

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## **5-10.001 Establishment**

The Wildlife Section was established on November 8, 1979, by Environment and Natural Resources Division Directive No. 22-79. The Marine Resources Section was established on November 5, 1969, by Environment and Natural Resources Division Directive No. 6-691. The consolidated Wildlife and Marine Resources Section was established on June 15, 1981, by Environment and Natural Resources Division Directive No. 1.

## **5-10.100 Area of Responsibility**

The Wildlife and Marine Resources Section has responsibility for prosecuting, defending, supporting, and coordinating the prosecution and defense of all civil and criminal cases, matters, and proceedings arising under the laws listed below (*see* USAM 5-10.120).

## **5-10.120 Statutes Administered**

The federal statutes giving rise to litigation handled by the Section include the following:

- A. Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*
- B. Lacey Act Amendments of 1981, 16 U.S.C. § 3371 *et seq.*, 18 U.S.C. § 42
- C. Airborne Hunting Act, 16 U.S.C. § 742j-1
- D. Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*
- E. Migratory Bird Conservation Act, 16 U.S.C. §§ 715 to 715d, 715e, 715f to 715k, 715 to 715r
- F. Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d
- G. Dingell-Johnson Fish Restoration Act, 16 U.S.C. §§ 777 to 777i, 777k
- H. National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee
- I. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1431 *et seq.*
- J. Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*
- K. Whaling Convention Act, 16 U.S.C. § 981 *et seq.*
- L. Atlantic Tunas Convention Act, 16 U.S.C. § 971
- M. Tuna Conventions Act, 16 U.S.C. § 951 *et seq.*
- N. Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*
- O. Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. § 776 *et seq.* [repealed]
- P. Fur Seal Act of 1966, 16 U.S.C. § 1151 *et seq.*
- Q. Protection of Sea Otters on the High Seas Act, 16 U.S.C. § 1171 *et seq.*
- R. Wild Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340
- S. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 to 667e
- T. Animal Damage Control Act, 7 U.S.C. § 426 *et seq.*
- U. Sponge Act, 16 U.S.C. § 781 *et seq.*
- V. Northern Pacific Halibut Act, 16 U.S.C. § 773 *et seq.*
- W. Northern Pacific Fisheries Act, 16 U.S.C. § 1021 *et seq.* [repealed]
- X. Antarctic Conservation Act, 16 U.S.C. § 2401 *et seq.*
- Y. Atlantic Salmon Convention Act, 16 U.S.C. § 3601 *et seq.*

## **5-10.200 Organization**

The section is administered by a Chief and three Assistant Chiefs. The work of the Section is assigned among staff attorneys according to experience and workload.

## **5-10.300 Supervision and Handling of Wildlife and Marine Resources Section Cases -- Request for Instructions**

Requests for instructions and guidance relating to the prosecution or defense or actions under the jurisdiction of the Section shall be referred to: Chief, Wildlife and Marine Resources Section, Environment and Natural Resources Division, Department of Justice, P.O. Box 7369, Ben Franklin Station, Washington, D.C. 20044-7369 (202-305-0210).

### **5-10.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases**

The general authority of United States Attorneys to initiate cases under the supervision of the Wildlife and Marine Resources Section is set forth in USAM 5-1.310. Cases which do not raise new or unusual questions of law may be initiated by the United States Attorney without prior authorization from the Section in response to a direct request in writing from an authorized field officer of the department or agency concerned.

Upon receipt of referrals of any case within the jurisdiction of the Section, notice shall be given to the Section before filing or declining to file an action, as set forth in USAM 5-10.312.

United States Attorneys are not authorized to commence actions against foreign vessels or foreign fishermen under the Magnuson Fishery Conservations and Management Act, 16 U.S.C. § 1801 *et seq.*, without prior telephonic approval from the Section. The views of the United States Attorney for a district to which a foreign vessel may be brought will be ascertained in advance of seizure by the Coast Guard. The United States Attorney should then contact the Section to discuss the complaint to be filed, release bond and inventory arrangements.

### **5-10.312 Notice to Wildlife and Marine Resources Section of Intention to File Direct Referral Action**

No later than three (3) business days prior to instituting or declining to institute a direct referral action arising under the jurisdiction of the Section, the Chief of the Section shall be notified of the proposed action, and copies of relevant documents shall be forwarded in due course. This notice and document forwarding requirement is waived when, for example, a case involves routine enforcement of the Migratory Bird Treaty Act or ordinary forfeiture proceedings not concerning wildlife or associated articles of significant value.

The notice requirement is applicable where, for example, a case involves a conspiracy to violate the import or export provisions of the Endangered Species Act, the Marine Mammal Protection Act, or the Lacey Act; a multi-jurisdictional conspiracy involving the interstate trafficking in wildlife or wildlife parts and products in violation of any federal wildlife or marine resource law; a violation of the felony provisions of the Lacey Act or the Migratory Bird Treaty Act; any litigation involving the Wild Horses and Burros Act. If there is doubt as to whether notice and document forwarding is necessary, inquiry to the Section is appropriate.

### **5-10.320 Actions Not Subject to Direct Referral to United States Attorney**

Responsibility for the handling of cases under the supervision of the Wildlife and Marine Resources Section is assigned by the Chief of the Section under the provisions of USAM 5-1.322 through 5-1.326.

### **5-10.321 Prior Authorization Needed to Initiate Action or Assume Defense of Action**

Except for cases authorized to be filed upon direct referral, (*see* USAM 5-10.310) no case under the supervision of the Wildlife and Marine Resources Section may be initiated by a United States Attorney without prior authorization (*see* USAM 5-1.302). In all cases under the supervision of the Section in which the United States, a federal agency or agency official is a defendant, the United States Attorney shall inquire of the Section whether the assignment will be field, staff or joint. The United States Attorney shall provide notice immediately to the section when any motion for preliminary relief is filed.

### **5-10.500 General Procedures in District Court Litigation**

The general instructions set forth in USAM 5-1.100 *et seq.*, with respect to the handling of litigation, apply in every respect to the litigation of the Wildlife and Marine Resources Section. Particularly, it is of the utmost importance that complaints filed against the United States, federal agencies or federal officials in matters relating to the area of responsibility of the Wildlife and Marine Resources Section be transmitted promptly to the chief of the Section.

### **5-10.600 Settlement and Dismissal of Cases**

Except with respect to direct referral cases involving no new or unusual questions of fact or law (discussed in USAM 5-1.310, 5-5.230, and 5-5.240), no claim or case under the jurisdiction of the Wildlife and Marine Resources Section may be settled or dismissed without specific or delegated authority from the Attorney General. *See* USAM 5-5.210 *et seq.*

### **5-10.620 Transmittal of Compromise to Wildlife and Marine Resources Section; Recommendations With Respect to Acceptance**

Where compromise in a case other than a direct referral case is offered to a United States Attorney, he shall forward the offer to the Section along with his recommendation and supporting analysis.

The recommendation should be guided by the principle that a compromise offer should be declined unless it fairly reflects (a) doubt that the government position will prevail, (b) doubt that judgment can be secured for an amount larger than that offered in compromise, (c) doubt that an amount larger than that offer can be collected, although a judgment has been or can be secured, or (d) the probability that cost of collection will exceed the difference between the amount recoverable and the amount offered.

### **5-10.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**

The general authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the Wildlife and Marine Resources Section is set forth in USAM 5-5.230.

Subject to the limitations imposed by this paragraph and section USAM 5-5.240, United States Attorneys are authorized, without prior approval of the Environment and Natural Resources Division, to settle all direct referral actions relating to wildlife law enforcement.

Telephonic notice shall be given to the Section prior to any such settlement or dismissal and copies of all relevant documents shall be forwarded to the Section. This notice requirement is waived in certain categories or cases discussed in USAM 5-10.312 and USAM 5-1.310.